ticulars—the use of the property until the railroad company should need it for its purposes—seems rather too literal a construction of the statute cited to sustain it. It is scarcely probable that by providing that the plaintiff in ejectment shall state "whether he claims in fee or for life, or the life of another, or for years, specifying such lives or the duration of such term" (sec. 2730), the statute meant to deny the remedy of ejectment to a plaintiff whose estate was not a fee, or for life or for years. The more reasonable interpretation would seem to be (and the reason rather than the letter should govern) that the statute means, in substance, that the plaintiff shall describe the *character* of the estate which he claims—and the mention of the estate in fee, for life, etc., was intended rather as illustrating the nature of the description called for by the statute. This seems borne out by the succeeding section (2743), which provides that "the verdict shall also *specify the estate found in the plaintiff*, whether it be in fee, or for life, etc., and specifying the duration of such term." The substance of this is, that the verdict shall *specify the estate* found in the plaintiff—and what follows appears to be illustrative rather than exhaustive or exclusive. Besides, it is by no means certain that the plaintiff did not in this case claim a base fee—and the statute is not confined to fees *simple*, but is applicable to fees of every kind, including, therefore, the base fee. The court, in this same opinion, defines a base fee as "one that may, by its limitation, continue forever, but has a qualification annexed in pursuance of which it may be determined at any moment." Here, the plaintiff claimed an estate in the property mentioned in the seventh clause to last *until the railroad company needed the same for its purposes*. This estate might last forever, as the company might never need it, but it might come to an end at any moment.

If ejectment does not lie in such case, as held, the remedy of the plaintiff would be the unsatisfactory one of unlawful detainer—or, possibly, by reason of the inadequacy of the legal remedy, a suit in equity.

VIRGINIA-CAROLINA RAILWAY CO. VS. BOOKER AND OTHERS.*

Supreme Court of Appeals: At Staunton.

September 12, 1901.

1. CONDEMNATION PROCEEDINGS—*Alienation of land—Compensation—When title passes to land condemned—Entry under Code, sec. 1081.* Title to land condemned in Virginia for public purposes remains in the owner until judgment of the court in the condemnation proceedings is rendered confirming the report of commissioners as to the damages assessed, and the payment of the money to the party entitled, or into court. The entry of the party condemning under the provisions of section 1081 of the Code does not give him title until there is a final judgment fixing the amount of the compensation, and the payment of the same to the parties entitled, or into court.

2. CONDEMNATION PROCEEDINGS—*Alienation of land—Who entitled to compensation.* Until the person entitled to acquire the property of another for a

* Reported by M. P. Burks, State Reporter.

public use has so far progressed in condemnation proceedings as to take immediate possession thereof, no right to compensation for the land proposed to be taken and for damages to the residue of the tract accrues to the owner, and his conveyance of the *locus in quo*, in the absence of any reservation, carries with it to the grantee the right to such compensation and damages when the report of the commissioners is confirmed and the money is paid to him, or into court.

Error to a judgment of the Circuit Court of Washington county, rendered October 9, 1900, in a condemnation proceeding wherein plaintiff in error was the plaintiff, and the defendants in error were the defendants. *Reversed.*

The opinion states the case.

White & Penn, for the plaintiff in error.

Fulkerson, Page & Hurt, and *Daniel Trigg*, for the defendants in error.

CARDWELL, J., delivered the opinion of the court.

In the year 1888, the Abingdon Coal and Iron Railroad Company commenced proceedings in the County Court of Washington county to condemn a right of way through certain lands of W. O. Booker. July 20, 1888, the commissioners appointed to ascertain what would be a just compensation for the land proposed to be taken and the damages to the residue of the tract, reported that 5 99-100 acres of "cleared land" would be taken for the road bed and right of way, which they valued at $50 per acre, aggregating $299.50, and that the damages to the residue of the "cleared land" would be $750; that 13 68-100 acres of the "knob land" would be taken, of the value of $2.50 per acre, aggregating $34.20, and that the damage to the residue of the "knob land" would be $250, making the total damages assessed $1,333.70. Exceptions were endorsed on the report by counsel for W. O. Booker on the ground that the damages assessed were inadequate, but no action was taken upon the exceptions or the report for nearly twelve years. In the summer of 1890, W. O. Booker contracted to sell his farm, through which the railroad's right of way was sought to be condemned, and on January 15, 1891, conveyed the same to the purchaser, The Litchfield Land Co. February 15, 1891, the Abingdon Coal and Iron Railroad Company entered upon the land and began grading its road bed, no objection being made by any one, but soon thereafter all work on the line of the road

was discontinued and the enterprise apparently abandoned. All of the property of the Abingdon Coal and Iron Railroad Company was sold under deeds of trust, and the purchasers organized the Virginia Western Coal and Iron Railroad Company, and by an act of the Legislature, approved March 1, 1898, the name of this new company was changed to Virginia-Carolina Railroad Company. At the second December rules, 1897, of the Circuit Court of Washington county, certain stockholders of The Litchfield Land Company filed a bill to have its real estate partitioned among its stockholders, and the charter of the company revoked and annulled. Accordingly commissioners were appointed, the real estate partitioned, and by a decree of May 6, 1898, the report of the commissioners, as to the partition of the real estate, was confirmed and the charter of the company revoked and annulled. In this partition all the "cleared lands" were given to H. C. Stuart and the widow and heirs of W. A. Stuart, deceased, and the "knob lands" to Mrs. C. P. Booker and T. P. Trigg and associates, Mrs. Booker having acquired the rights of her husband, W. O. Booker, in the lands. February 1, 1900, H. C. Stuart and the widow and heirs of W. A. Stuart, deceased, sold and conveyed to the Virginia-Carolina Railway Company the right of way for its railroad as located and graded through the lands partitioned to them, and on March 6, 1900, the Virginia-Carolina Railway Company paid into court the sum of $1,333.70, the amount of damages ascertained by the commissioners in their report of July 20, 1888.

Additional exceptions on behalf of W. O. Booker were filed on April 18, 1900, to the commissioner's report, and when the case came on to be heard, by consent of all parties in interest, at the May term, 1900, of the County Court, the matter was submitted to the Judge of the County Court for decision, subject to the right of appeal, but only two questions were raised and considered by the court—viz.: First, who is entitled to compensation, etc., for the "cleared lands" of the Booker farm taken by the Virginia-Carolina Railway Company for its purposes; and, second, what interest should be allowed upon the compensation, etc. The County Court, by its order made June 27, 1900, directed that one-third of the $1,333.70 paid into court by the Virginia-Carolina Railway Company be paid to Mrs. C. P. Booker, with interest thereon from February 15, 1891, and that one-sixth of the $1,333.70, with like interest, be paid to T. O. Trigg and associates.

This judgment having been, upon a writ of error awarded the Virginia-Carolina Railway Company, affirmed by the Circuit Court of

Washington county, it is before us for review upon a writ of error awarded by one of the judges of this court.

It is manifest that the order of the County Court complained of is based upon the view that the fund, paid into court by plaintiff in error belonged to the stockholders of The Litchfield Land Company in proportion to their respective holdings, and that they were entitled to their respective interests in this fund as of February 15, 1891, when the Abingdon Coal and Iron Railroad Company went upon the land and began grading its road bed.

Nothing whatever is said in the deed from W. O. Booker to The Litchfield Land Company conveying the lands through which the railroad's right of way runs about compensation for the land proposed to be taken as the railroad's right of way and damages to the residue of the tract; nor did The Litchfield Land Company ever treat this claim for damages as an asset of the company. The conveyance from Booker to The Litchfield Land Company is a simple conveyance of the land, without reference to compensation or damages by reason of the proposed railroad, and the partition of this land among the stockholders of the land company was made without reference to such compensation in damages.

Title to land condemned in Virginia for public purposes remains in the owner until judgment of the court, in which the condemnation proceedings are pending, confirming the report of commissioners as to damages assessed and payment of the money to the party entitled or into court. Code of Virginia, section 1083.

Where there are exceptions to the report, the party seeking to condemn the land may pay the money into court, and may thereupon enter into and construct its works upon and through that part of the land described in the commissioner's report. Section 1081 of the Code. But this gives the party condemning no title to the land until there is a final judgment of the court fixing the amount of compensation and the payment of same to the party or parties entitled or into court. Section 1083 of the Code. *Robinson* v. *Crenshaw*, 84 Va. 348.

Arising, doubtless, out of diverse statutory provisions in the various States touching condemnation proceedings under the right of eminent domain, there is some conflict among the authorities as to party entitled to compensation, where there has been a sale of the *locus in quo* pending condemnation proceedings.

In discussing this question, Lewis, in his work on Eminent Domain, section 318, says: "The right to compensation is a personal claim,

and after it has once accrued does not pass by a deed of the land. When land is occupied wrongfully or by mere consent of the owner, express or implied, no right or title to the land so occupied passes, and a subsequent deed by the owner vests the entire estate in the grantee, and such grantee, in the absence of any reservation, is entitled to just compensation for the land so occupied. The grantor in such case who has not consented to the occupation of his land may recover damages for all damages sustained up to the time of the deed, to be estimated as in an action of trespass."

In section 627, this learned author further says: "Where a party, having power to acquire property for public use, enters upon and occupies property for the purpose of appropriating it to such use, without having complied with the law, a conveyance of the property pending such occupation, will vest the right to compensation in the grantee, whether the entry was with or without consent. The authorities are by no means harmonious upon this proposition, but it is supported by the greater number and by the general rules which govern the acquisition of interests in real estate." . . .

In *Carli* v. *Stillwater etc. R. R. Co.*, 16 Minn. 260, a very similar case to this, the court said: "If the proceedings to condemn the property were completed, and the company acquired the title to the easement or right of way over the *locus in quo* before the execution of the deed, Carli (grantee) would take the premises subject to the right of the company, and the damages would inure to the owner of the land at the time the right vested in the company, but if the proceedings were not completed but inchoate, and the company did not acquire title to the easement prior to the execution of the deed, the premises passed to Carli, and he became the owner, and the right to damages was in him as an incident to the ownership" See, also, *Maginnis &c.* v. *Nunnamaker*, 64 Penn. 374.

We have no case in Virginia adjudicating this precise question, but it clearly appears to be the policy of our statutes on the subject, that until the person or corporation entitled to acquire property for public use has so far progressed in condemnation proceedings, and against the will of the owner, to take immediate possession thereof, no right to compensation for the land proposed to be taken and for damages to the residue of the tract accrues to the owner and his conveyance of the *locus in quo*, in the absence of any reservation, carries with it to the grantee the right of compensation for the land taken, etc., when there has been a confirmation of the report of commissioners and payment to

him or into court. As has been stated, there was no reservation in the conveyance of the *locus in quo* from W. O. Booker to The Litchfield Land Company of the right to compensation for the land proposed to be taken for the right of way of the Abingdon Coal and Iron Railroad Company, and at no time did The Litchfield Land Company treat this claim to compensation for the railroad's right of way as an asset, but submitted to a partition of its land among its stockholders without any reference to it whatever.

The right of way and roadbed were taken into consideration by the commissioner and partitioned as were other portions of the lands of The Litchfield Land Company. In doing this, the commissioner doubtless equalized the rights of all parties concerned, giving to each that to which each was entitled. The "cleared lands" were allotted to the Stuarts and the "knob lands" to Mrs. Booker and Trigg and associates, and this partition was acquiesced in by the parties and confirmed by the court. By it the right of compensation for the land proposed to be taken for the railroad's right of way and for damages to the residue of the lands passed to the parties respectively as an incident of ownership of the lands partitioned to each. So that, when the condemnation proceedings had so far progressed as to give to the plaintiff in error the right of immediate entry upon the land against the will of the owner, these parties to whom the lands had been partitioned became entitled respectively to the compensation fixed by the commissioners in their report of July 20, 1888; the Stuarts became entitled to the compensation for the "cleared lands" taken and to the damages to the residue of the "cleared lands," and Mrs. Booker and T. P. Trigg and associates to the compensation for the "knob lands" taken and to the damages to the residue of the "knob lands." Plaintiff in error having acquired by purchase from the Stuarts a right of way for its railroad through the "cleared lands," appellees were only entitled out of the fund paid into court March 6, 1900, by plaintiff in error, to the compensation fixed by the commissioner's report for the "knob lands" taken, and as the damages to the residue of the "knob lands."

The judgment complained of will, therefore, be reversed and annulled and the cause remanded to be further proceeded with in accordance with this opinion. *Reversed.*

NOTE.—We have not seen the briefs of counsel in this case, and are therefore ignorant of the arguments made on behalf of the losing side, but, as the case ap-

pears from the opinion, the reversal of the lower court seems necessarily to have followed on plainest reason. The inchoate condemnation proceeding passed no title to the land proposed to be taken, and hence gave no claim to the then owner for its value. The property having come by mesne conveyances to the present holders, from whom the railroad company has taken it by condemnation proceedings, it logically follows that the present holders are entitled to the compensation.

WATTS V. COMMONWEALTH.*

Supreme Court of Appeals: At Staunton.

September 12, 1901.

1. CRIMINAL LAW—*Appeal from Justice—Reversal—Former jeopardy.* A reversal, at the instance of the prisoner, of the judgment of a justice of the peace, for formal defects in the charge of a misdemeanor, is no bar to further prosecution for the same offence.
2. CRIMINAL LAW—*Indictment—Record of finding.* An order of a corporation court, entered of record, "that the indictment presented by the grand jury against N. C. Watts for misdemeanor be certified to the police justice of this city, to be by him disposed of according to law," is a sufficient record of the finding of such an indictment.
3. CRIMINAL LAW—*Indictment—Errors not apparent.* Objections to an indictment for errors which do not appear on the face of the indictment, can only be taken advantage of by a motion to quash, or by plea—not by demurrer.
4. CRIMINAL LAW—*Jailor—Negligent escape—Sheriff—Deputy.* The sheriff in Virginia is *ex officio* jailor of his county, but may devolve the duties of jailor on a deputy, and will not be criminally liable for a negligent escape permitted by him. If, however, a prisoner is permitted to go at large with his knowledge and approval, and by his direction and authority, and while so at large the prisoner escapes, the sheriff is himself criminally liable for the escape.
5. CRIMINAL LAW—*Misdemeanors—Accessories.* At common law there are no accessories to misdemeanors. All concerned are principals.

Error to a judgment of the Hustings Court for the city of Staunton, rendered February 14, 1901, on a prosecution of the plaintiff in error for a misdemeanor. *Affirmed.*

The opinion states the case.

Patrick & Gordon and *Curry & Glenn*, for the plaintiff in error.

Attorney-General A. J. Montague and *A. C. Braxton*, for the Commonwealth.

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* Reported by M. P. Burks, State Reporter.